

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BROWN FOX MINING CO., INC.

and

Cases 9--CA--18391 *and*  
9--CA--18602

UNITED MINE WORKERS OF AMERICA

SUPPLEMENTAL DECISION AND ORDER

On 25 March 1983 the National Labor Relations Board issued a Decision and Order <sup>1</sup> in the above-entitled proceeding in which the Board in part ordered the Respondent to make whole certain employees for their losses resulting from the Respondent's discrimination against them. On 8 June 1983 the United States Court of Appeals for the Sixth Circuit entered its judgment <sup>2</sup> enforcing the Board's Order. A controversy having arisen over the amount of backpay due, the Regional Director for Region 9 on 16 December 1983 issued a backpay specification and notice of hearing. Although properly served a copy of the backpay specification, the Respondent failed to file an answer.

On 6 February 1984 the General Counsel filed a Motion for Summary Judgment. On 8 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Respondent filed no response. The allegations in the motion are therefore undisputed.

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<sup>1</sup> Not reported in Board volumes.

<sup>2</sup> NLRB v. Brown Fox Mining Co., No. 83--5363.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides that the Board may find the specification to be true and enter such order as may be appropriate if an answer is not filed within 15 days from the service of the specification. The specification states that the Respondent shall file an answer within 15 days from the date of the specification and "[t]o the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure so to do is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them." Further, the undisputed allegations in the "Memorandum in Support of the Motion for Summary Judgment" disclose that counsel for the General Counsel, by letter dated 18 January 1984, notified the Respondent that, unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer we grant the General Counsel's Motion for Summary Judgment.<sup>3</sup> On the basis of the allegations of the specification, which are accepted as true, the Board concludes that the net backpay due each of the employees is as stated in the computations of the specification and orders the payment thereof be made by the Respondent to each employee named below.

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<sup>3</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's backpay specification. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

## ORDER

The National Labor Relations Board orders that the Respondent, Brown Fox Mining Co., Inc., Paintsville, Kentucky, its officers, agents, successors, and assigns, shall make whole each of the employees named below by payment to them of the amounts set forth adjacent to their names, plus interest to be computed in the manner specified in Florida Steel Corp., 231 NLRB 651 (1977),<sup>4</sup> and accrued to the date of payment, minus the tax withholdings required by Federal and state laws:

David Anderson. . . . .	\$3255
David Combs. . . . .	945
Jerry Combs. . . . .	\$1710
Kenneth Combs. . . . .	2170
Joey Crum. . . . .	2604
Timothy Crum . . . . .	3255
James Francis. . . . .	1680
Eddie Griffith.. . . .	2170
Wayne Griffith.. . . .	3255
Jeff Jones.. . . .	2790
Kandy Johnson. . . . .	3255

<sup>4</sup> See generally Isis Plumbing Co., 138 NLRB 716 (1962).

John Mays. . . . . 2170  
 Gary Prater. . . . . 3255  
 Danny Ritchie. . . . . 2844  
 Jimmy Rings. . . . . 1575  
 Richard Sexton.. . . . 715  
 Tim Sexton . . . . . 1050  
 Woodford Sexton . . . . . 1470  
 Kenneth Sizemore . . . . . 1075  
 Donald Titlow. . . . . 2635  
 Larry Williams . . . . . 735

Dated, Washington, D.C.

14 May 1984

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 Donald L. Dotson, Chairman

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 Don A. Zimmerman, Member

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 Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD